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SUBJECT: GE - ONE STEP CLOSER TO RESOLUTION

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11. (SBU) Summary. On December 27, the 8th Penal Court in Lima ruled in favor of General Electric (GE) on one of its six habeas corpus cases, lifting the international arrest warrant for the GE executives accused of having wrongfully terminated and committed fraud against former GE distributor in Peru Guillermo Gonzalez Newmann. Newmann's lawyers on December 28 appealed the Court's decision to overturn the arrest order, claiming that only the Constitutional Court can issue such a ruling. The Constitutional Court still has not ruled on the three remaining habeas corpus cases, two of which, if the Court rules in favor of GE, could throw out the case against GE. End Summary.

Background

12. (SBU) General Electric terminated its relationship in 1998 with Peruvian businessman Guillermo Gonzalez Newmann, former General Manager of LATAM, a distributor for GE in Peru from 1992-1998. Gonzalez Newmann brought a civil suit in a Kentucky Court against GE in 1999, seeking multi-million dollar damages. The American court, in 1999, found in favor of GE. In 2001, Gonzalez Newmann opened another civil case against GE in Miami Federal Court, which resulted in the American court again ruling in favor of GE in 2002. After losing the first (Kentucky) U.S. case, Gonzalez Newmann in 2000 filed criminal fraud charges against GE in several courts in Peru, until he found a court that would open a criminal case on what would normally be a civil matter.

13. (SBU) After two lower Peruvian courts ruled in favor of GE in 2001 and 2002, Gonzalez Newmann appealed the decision in July 2003, and included in his criminal case 23 high-ranking current and former GE officials. (Note: 20 of these officials are American citizens, with two from Chile and one Brazilian citizen. American citizens include former GE CEO Jack Welch, current CEO Jeffrey Immelt, James Campbell, David Blair, and current Home Depot CEO Robert Nardelli, among others. Please protect. End Note.) In September 2004, the Appellate Court ruled in favor of Newmann's appeal. Subsequently, the Peruvian prosecutors

convinced the Lima Criminal Court to issue an international arrest warrant for all 23 defendants. (Note: the warrants had glaring deficiencies per Peruvian law; for example inadequate identification of the suspects. End Note.) GE's local counsel then appealed the Appellate Court decision to the Superior Court. As a result, the arrest warrants were held until the Superior Court could make a decision.

14. (SBU) In June 2005, the Superior Court ruled that there was sufficient cause to order the case reopened, remanding the case to the trial court. At the same time, the Court also affirmed the detention order for the 23 executives, to be activated through Interpol. The Superior Court also ordered the seizure of GE property. The Ambassador, working closely with GE's local counsel, met several times with the Chief of the National Police and the Minister of Interior, who determined that the Peruvian police should not submit the warrant to Interpol for action until the appeals process has been exhausted.

GE's Plan of Attack

15. (SBU) In response to the 2005 Superior Court ruling, GE's local counsel submitted six petitions for habeas corpus to the Constitutional Court. GE filed four petitions against Criminal Court Judge Herrera Cassina (who issued the international arrest warrant on August 3, 2005), questioning the arbitrariness of the detention orders and arguing that the process violates due process. The habeas corpus cases also note that the detention order was improperly filed, as it did not include specific information required under Peruvian law (four names, identifying features, etc). (Note: Herrera Cassina is widely suspected of corruption. In filing these habeas corpus petitions, GE hopes to raise suspicions on why Gonzalez Newmann chose Cassina's court in which to file his case. End Note). If the Constitutional Court rules in favor of GE in any of these four cases, it would overturn the detention order and remand these cases to the Criminal Court for a trial.

16. (SBU) GE also submitted to the 8th Penal Court of Lima an additional fifth habeas corpus case filed against the Court of Appeals. This case argues that the 21 of the 23 current and former GE executives had no relationship with Gonzalez Newmann and should not be included in the arrest warrants. The final sixth habeas corpus case was submitted to the Constitutional Court. With this case, GE argues that two courts in the United States already adjudicated the facts of the fraud case, albeit as a civil case, and ruled in favor of GE. GE's local counsel claims that by allowing Newmann to venue shop, it violates the 23 GE officials' due process. By ruling in favor of GE in either of these two cases, the Constitutional Court could conclude that the process itself was illegitimate and dismiss the criminal cases against the GE executives.

One Ruling in Favor of GE
But Case is Appealed

17. (SBU) On December 27, the 8th Penal Court in Lima issued a ruling in favor of GE on one of its two habeas corpus petitions against the Appellate Court. The Court found that there was no clear link between the 21 of the 23 GE defendants and the justification stated in the warrant as well as a lack of specificity in the warrants. Judge Eduardo Jose Martin Gago of the 8th Penal Court, also declared null and void the international arrest warrants for all 23 GE executives. The Court also remanded the case to the criminal court, pending rulings by the Constitutional Court on the other habeas corpus cases.

18. (SBU) The next day, the lawyers for Gonzalez Newmann submitted an appeal of Judge Gago's decision, arguing that only the Constitutional Court has the power to nullify international arrest warrants. The Constitutional Court accepted the appeal, and it will hear arguments on this

habeas corpus case in late January.

Next Steps

¶9. (SBU) The Constitutional Court is expected to issue a final ruling on the four pending habeas corpus cases presented against Judge Herrera Cassina in mid-January. GE's local counsel, Jorge Santistevan, informed us that he expects the Constitutional Court make one of two decisions: either go beyond Judge Gago's ruling to include either nullification of the opening of the criminal case or call for a new opening of the case by a judge other than Judge Herrera Cassina. Additionally, Santistevan noted that the Constitutional Court may rule in early February on the habeas corpus case against the members of the Appeals Court. If the Constitutional Court rules in favor of GE in this case, it would reverse the decision to open the case, eliminating the criminal case against the GE executives.

¶10. (SBU) GE's U.S. legal team will be traveling to Peru the week of January 30 to meet with Peruvian officials. We will also meet with the GE team, as well as the local counsel, to coordinate our next steps.

Comment

¶11. (SBU) The ruling in favor of GE sets a precedent for the Constitutional Court to issue additional rulings in favor of the U.S. company. This case may have implications for Peru's investment climate.

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